

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BOBBY MCCURDY	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
	:	
JOAN ESMONDE, ESQUIRE AND	:	
HON. LYNNE ABRAHAM,	:	
Defendants	:	No. 02-4614

**MOTION TO DISMISS COMPLAINT AND AMENDED COMPLAINT**

TO THE HONORABLE JAN E. DUBOIS, JUDGE OF THE UNITED STATES  
DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA:

Defendants District Attorney Lynne Abraham (the “District Attorney”) and  
Assistant District Attorney Joan Esmonde (“ADA Esmonde”), in their individual and  
official capacities, by counsel, respectfully move to dismiss the Complaint and Amended  
Complaint (the “Complaint”). In support thereof, defendants aver:

1. Plaintiff has failed to establish this Court’s subject matter jurisdiction.  
The Complaint must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1)  
and the Rooker-Feldman doctrine because the claims plaintiff raises are inextricably  
intertwined with pending state court proceedings.
2. Even if plaintiff had established jurisdiction, the Court should abstain  
from exercising it, based on principles of comity and federalism.
3. Even if this Court has jurisdiction and elects to exercise it, the Complaint  
should be dismissed under Federal Rule of Civil Procedure 12(b)(6), because: (a)  
plaintiffs’ individual capacity claims against ADA Esmonde are barred by the doctrine of

absolute immunity; (b) plaintiff has stated no individual capacity claim against the District Attorney because he does not allege that she participated in the underlying state proceeding; (c) plaintiff has stated no official capacity claim against ADA Esmonde because ADA Esmonde is not a policymaker for the District Attorney's Office; and (d) plaintiff has stated no official capacity claim against the District Attorney because plaintiff waived any issue, including constitutional claims with respect to the state court proceedings, when he consented on the record to the entry of the underlying order for child support. He has also failed to adequately plead an official capacity claim based on alleged policies and inadequacies in training.

4. Defendants hereby incorporate the accompanying Memorandum of Law in support of their Motion to Dismiss the Complaint.

WHEREFORE, defendants respectfully requests that this Court grant their Motion To Dismiss and dismiss the Complaint with prejudice.

Respectfully submitted,

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Counsel for District Attorney Lynne  
Abraham and Assistant District Attorney  
Joan Esmonde

September 13, 2002